

**SYNOPSIS OF CRIMINAL OPINIONS IN THE COURT OF APPEALS OF THE STATE
OF MISSISSIPPI HANDED DOWN MAY 10, 2016**

David Alan Ringer v. State, No. 2014-KA-01805-COA (Miss.Ct.App. May 10, 2016)

CASE: Sexual Battery x2

SENTENCE: Count I, 30 years, and Count II, 20 years, with both sentences to run consecutively to each other, and with ten years suspended

COURT: Harrison County Circuit Court

TRIAL JUDGE: Hon. Michael H. Ward

APPELLANT ATTORNEY: Mollie Marie McMillin

APPELLEE ATTORNEY: Alicia Marie Ainsworth

DISTRICT ATTORNEY: Joel Smith

DISPOSITION: Count I Affirmed and Remanded for resentencing; Count II Reversed and Rendered and Remanded for resentencing on gratification of lust. Fair, J., for the Court. Griffis, P.J., Barnes, Ishee, Wilson and Greenlee, JJ., Concur. James, J., Concur in Part and Dissents in Part Without Separate Written Opinion. Irving, P.J., Dissents Without Separate Written Opinion. Carlton, J., Dissents with Separate Written Opinion, Joined by Lee, C.J., and James, J.; Irving P.J., Joins in Part.

ISSUE: (1) Whether the evidence was sufficient to support the verdict in Count II (penetration of the anus), and (2) whether the sentence was ambiguous in Count I as the court did not specify whether Count I or Count II had the suspended portion of the sentence

FACTS: While on a camping trip with a friend, 9-year-old Abby went off by herself to sleep in the back of a sport utility vehicle. She awoke to find David Ringer touching her vagina with his fingers and rubbing his penis between her buttocks. Abby reported the incident immediately. Ringer was later convicted of two counts of sexual battery. The first count alleged that Ringer penetrated Abby's vagina with his fingers. The second that he penetrated her anus with his penis. Ringer appealed.

HELD: (1) While the prosecutor was able to elicit unambiguous testimony that Ringer had touched the inside of Abby's vagina with his fingers, the evidence was insufficient to prove penetration of Abby's anus. Medical evidence also corroborated vaginal penetration, but there was no medical evidence to support anal penetration. Abby only testified Ringer put his penis inside her "butt," but the testimony seems to indicate only that Ringer had his penis in the cleft between the buttocks. This was insufficient to show penetration of the anus.

Viewed in the context of Abby's entire testimony, the accounts of her mother and the attending nurse, and the lack of supporting physical evidence, we conclude that these ambiguous statements do not suggest penetration to the extent that a reasonable juror could find it proven beyond a reasonable doubt.

However, since the evidence and testimony clearly showed gratification of lust, the COA applied the direct remand rule, and remanded the case back for resentencing for gratification of lust.

(2) The trial judge sentenced Ringer to 30 years in Count I and 20 years in Count II, to run consecutively. The order added this would be "a total of Fifty (50) Years, [and] the Court suspends Ten (10) Years leaving Forty (40) Years to serve" Ringer argued that this sentence was ambiguous as to whether the ten-year suspension applied to Count I or Count II. "Here, the suspended sentence was not conflicting or otherwise ambiguous; it was erroneously applied to a cumulative sentence encompassing both counts." Accordingly, the COA also remanded the case for resentencing on Count I.

Carlton, J., Dissenting:

Judge Carlton dissented, believing the evidence was sufficient to find Ringer guilty of sexual battery in Count II. She opined that Abby's testimony that Ringer "stuck his private area into my butt," was sufficient to prove penetration. Abby also stated the place where she wiped when she went to the potty is what she called her "butt."

...Abby's testimony were corroborated by the evidence of the trauma to the back of her vaginal wall and by the evidence of DNA on her underwear that was consistent with Ringer's DNA. Moreover, the record reflects that, while Abby used childlike terms instead of anatomical or medical terms to describe her anus and the penetration, her testimony was consistent and was not impeached.

To read the full opinion, click here:

<http://courts.ms.gov/Images/Opinions/CO111635.pdf>

Luke Reed v. State, No. 2014-KA-01203-COA (Miss.Ct.App. May 10, 2016)

CASE: Aggravated Assault and Felon in Possession of a Firearm

SENTENCE: 20 years for aggravated assault and a concurrent 5 years for felon in possession of a firearm

COURT: Hinds County Circuit Court

TRIAL JUDGE: Hon. Jeff Weill, Sr.

APPELLANT ATTORNEY: Erin Elizabeth Pridgen

APPELLEE ATTORNEY: Alicia Marie Ainsworth

DISTRICT ATTORNEY: Robert Shuler Smith

DISPOSITION: Reversed and Remanded. Wilson, J., for the Court. Lee, C.J., Irving and Griffis, P.JJ., Barnes, Ishee, Carlton, Fair and Greenlee, JJ., Concur. James, J., Concur in Part Without Separate Written Opinion.

ISSUES: (1) Whether his right to a speedy trial was violated and, (2) (pro se issue) whether the trial

court erred by barring from him impeaching prosecution witness and victim Jimmy Lewis with evidence of Lewis's prior convictions.

FACTS: Jimmy Lewis was shot during an incident at his house on November 3, 2012. Luke Reed lived in a tent in a wooded area in Jackson near Lewis's house. The two men sat on the porch and drank liquor together. Accordingly to Reed, he left to go buy more whiskey. Lewis's girlfriend, Cassandra James, was at Lewis's house when Reed returned. At some point later, Reed claimed some men came by trying to buy crack from Lewis. Lewis asked Reed if he could borrow his gun. (Reed said he carried a gun for protection because he is homeless). However, after the men left, Lewis keep Reed's gun and went inside. Reed later wanted to leave and got into an argument with Lewis and the two struggled with the gun. It went off and Lewis was shot. He claimed Lewis shot himself. On the other hand, Lewis testified and denied that he ever asked for or took possession of Reed's gun. Lewis asked Reed to leave so that he and James could spend some time alone. Reed did not want to go. Reed put the pistol in Lewis's side and quickly shot him once. James testified that she was afraid because Reed had a gun, so she asked Lewis to ask Reed to leave. She stated she witnessed Lewis tell Reed to leave. Reed pulled a gun in response. She stated he fired the gun into the ground and then shot Lewis in the stomach. At trial, Reed sought to cross-examine Lewis on his prior criminal convictions for grand larceny and possession of cocaine. The court refused to allow the impeachment because the convictions were not "particularly probative of honesty" and that their probative value was substantially outweighed by the danger of unfair prejudice to the State. Reed was convicted and appealed.

HELD: (1) There was no violation of Reed's speedy trial rights. Reed was arrested on November 3, 2012, and was tried on July 14, 2014. The trial was delayed for approximately one year as a result of a series of continuances, mainly because Reed asked that his case be placed on the "plea docket." Other delays appeared to be caused by "docket congestion." The lead prosecutor was terminated at one point and co-counsel had a scheduled leave of absence. Reed also requested a speedy trial, but his repeated plea scheduling was inconsistent with a desire for a speedy trial. Finally, Reed failed to make any argument that he was prejudiced in his ability to defend himself at trial. "Therefore, under binding Mississippi precedent, we conclude that the trial judge did not err by denying Reed's motion to dismiss the charges against him."

(2) The trial did err in failing to allow Reed to cross-examine Lewis about his prior convictions. The error cannot be dismissed as harmless because Lewis's testimony and credibility were critical to the State's case. Given a defendant's rights under the Confrontation Clause, MRE 609(a)(1) allows full impeachment of prosecution witnesses without the requirement of a balancing test, except in extreme situations. This case turned on the credibility of the defendant, the victim, and the victim's girlfriend. The jury heard the defendant was a felon. Lewis had a motive to lie since he was on probation and could possess a gun. Harmless error in not appropriate, as the evidence of Reed's guilt presented at trial was not overwhelming.

To read the full opinion, click here:

<http://courts.ms.gov/Images/Opinions/CO112838.pdf>

Sammie Lee Johnson v. State, No. 2015-CP-00234-COA (Miss.Ct.App. May 10, 2016)

CASE: PCR – Capital Murder
SENTENCE: Life w/o Parole

COURT: Marshall County Circuit Court
TRIAL JUDGE: Hon. Andrew K. Howorth

APPELLANT ATTORNEY: Sammie Lee Johnson (Pro Se)
APPELLEE ATTORNEY: Scott Stuart, Jason L. Davis

DISPOSITION: Dismissal of PCR Affirmed. Greenlee, J., for the Court. Lee, C.J., Irving and Griffis, P.JJ., Barnes, Ishee, Carlton, Fair, James and Wilson, JJ., Concur.

ISSUE: Whether the trial court erred in dismissing Johnson’s PCR as procedurally barred.

FACTS: On August 19, 2002, Sammie Johnson pled guilty to capital murder. Johnson filed four previous PCRs, and all four were denied. Johnson appealed his third and fourth denials, but both were affirmed as time barred, successive writ barred and found to be without merit. Johnson filed a fifth PCR, but the circuit court found it was the same as his fourth PCR. It was again denied as time-barred and a successive writ. Johnson again appealed.

HELD: Johnson’s claims are barred by the doctrine of res judicata. Johnson also failed to raise any viable exception to the successive-writ bar. Further, his claims are time barred. Johnson claimed that the circuit court violated his due-process rights by failing to address his ineffective assistance of counsel claims and by sentencing him to life without parole without putting the sentencing to a jury. Again, these claims were previously ruled on and are barred as res judicata. Finally, Johnson asserts that his being represented by only one attorney prejudiced his defense. However, Johnson failed to cite authority to support his claim. There was also no cumulative error.

To read the full opinion, click here:
<http://courts.ms.gov/Images/Opinions/CO112131.pdf>

Anthony Washington v. State, No. 2013-CP-01442-COA (Miss.Ct.App. May 10, 2016)

CASE: PCR – Possession of Cocaine with Intent
SENTENCE: 15 years, with 8 to serve, 7 years suspended, and 5 years of PRS

COURT: Hinds County Circuit Court
TRIAL JUDGE: Hon. William A. Gowan, Jr.

APPELLANT ATTORNEY: Anthony Washington (Pro Se)
APPELLEE ATTORNEY: Jeffrey A. Klingfuss

DISPOSITION: Dismissal of PCR Affirmed. Griffis, P.J., for the Court. Lee, C.J., Irving, P.J., Barnes, Ishee, Carlton, Fair, James, Wilson and Greenlee, J.J., Concur.

ISSUES: (1) Whether the trial court had jurisdiction to resentence him to remove the "intent to sell" portion of sentence, and (2) whether he received ineffective assistance of counsel.

FACTS: On March 26, 2011, Anthony Washington was driving a pickup truck driving recklessly on Highway 18 in Jackson. Police pulled the truck over and Washington immediately got out and walked toward the officer. Officer Mark Morgan smelled alcohol on Washington's breath and conducted a pat-down, which revealed a bag of marijuana in Washington's pocket. After arresting Washington, Morgan conducted a search of the truck and discovered a crack pipe and a large quantity of white powder, later confirmed to be 61.7 grams of cocaine. On October 3, 2011, Washington pled guilty and the State dropped all indicted enhancements. On May 24, 2013, Washington filed a PCR, asking that his guilty plea be set aside based on ineffective assistance of counsel. The trial court appointed Washington an attorney to make sure he understood the consequences of withdrawing his plea. Washington, with counsel's assistance, filed an amended PCR that requested the trial court resentence Washington for possession of cocaine rather than possession with intent, which would allow Washington to apply for trustee status. On March 19, 2014, the trial court dismissed Washington's PCR stating the court lacked jurisdiction to modify Washington's sentence. Washington appealed.

HELD: (1) The trial court did not err in refusing to amend Washington's sentence. Washington's sentence commenced on October 3, 2011, when he entered his guilty plea and received his sentence. Washington then filed his PCR on May 24, 2013, approximately one year and seven months after the start of his sentence. Therefore, the trial court lacked the jurisdiction to modify Washington's sentence.

(2) Washington claimed he received ineffective assistance when he relied on counsel's promises that he would qualify for trustee time, which would reduce the amount of time he served. Washington claims that but for his counsel's promise, he would have gone to trial and put on evidence that he merely possessed the cocaine rather than possessed with intent to sell. The plea colloquy clearly indicates that Washington's plea was voluntary. Washington also stated he was satisfied with the representation he received from counsel. The trial court conducted a hearing and presented Washington with the option to have his guilty plea vacated, which he declined.

To read the full opinion, click here:

<http://courts.ms.gov/Images/Opinions/CO112319.pdf>

Rubin Renfrow v. State, No. 2014-CA-01567-COA (Miss.Ct.App. May 10, 2016)

CASE: PCR – Willful Possession of Child Pornography

SENTENCE: 15 years

COURT: Simpson County Circuit Court

TRIAL JUDGE: Hon. Michael H. Ward

APPELLANT ATTORNEY: Julie Ann Epps, Cynthia Ann Stewart

APPELLEE ATTORNEY: Abbie Eason Koonce

DISPOSITION: Denial of PCR Affirmed. Griffis, P.J., for the Court. Lee, C.J., Irving, P.J., Barnes, Ishee, Carlton, Fair, James and Greenlee, JJ., Concur. Wilson, J., Concur in Part and in the Result Without Separate Written Opinion.

ISSUES: (1) Whether Renfrow's counsel was ineffective in not understanding and presenting his defense to the jury, (2) whether Renfrow was denied due process of law and a fair trial when evidence of legal emails and stories was admitted to show Renfrow "preferred children," (3) whether Renfrow's counsel was ineffective in failing to properly object and request limiting instructions and/or to appeal the admission of unfairly prejudicial evidence suggesting that Renfrow was a bad person who should be convicted because he "preferred children."

FACTS: In March of 2006, a child related to Renfrow indicated to a school counselor that the child was exposed to inappropriate matter of a sexual nature. The child and a sibling indicated that Renfrow showed them pictures of naked adults and children. Officials in Simpson County sought and obtained warrants to arrest Renfrow and to seize his computer. Renfrow waived his rights and agreed to be interviewed by investigators. During the interview Renfrow admitted that he had child pornography on his computer but denied that it was intentional and instead claimed it came from unsolicited e-mails which he tried to delete. The interview was recorded without audio. Renfrow filed several pre-trial motions including motions to suppress and for a continuance. Ultimately, Renfrow was tried and convicted of possession of child pornography. His conviction was affirmed on direct appeal. *Renfrow v. State*, 34 So. 3d 617 (Miss. Ct. App. 2009). In 2013, Renfrow filed an application for leave to file a PCR. The MSSCT remanded to the circuit court for an evidentiary hearing on two specific issues: (1) whether Renfrow was denied due process and a fair trial when evidence of legal emails and stories was admitted to show Renfrow "preferred children," and (2) whether counsel was ineffective in failing to properly object and request limiting instructions and/or to appeal the admission of unfairly prejudicial evidence. After a hearing, the circuit court found, based on a computer expert's testimony and the record, that Renfrow did not receive ineffective assistance of counsel and that he was not denied due process. He appealed.

HELD: (1) Renfrow claimed that his trial counsel did not properly understand the computer science involved in the case and that he chose an inadequate defense. The circuit court found the defense reasonable. Renfrow has not shown that counsel's performance was deficient. Renfrow therefore fails to meet the first prong of the *Strickland* test.

(2) Renfrow's defense was that he accidentally and unknowingly downloaded the child pornography to his hard drive. The information regarding his computer usage and emails was used to negate this defense and to show that he did not download the images by accident. This was proper under MRE 404(b).

(3) Renfrow contends that his counsel was ineffective because the evidence and testimony warranted objection and a limiting instruction. He also argues that trial counsel should have raised these issues on appeal. Much of the evidence and testimony was admitted over objections by Renfrow's trial counsel. And certain questions asked of Renfrow himself could have been avoided if Renfrow followed his counsel's advice to not take the stand. Whether to object is trial strategy. Renfrow has

not shown that trial counsel was deficient. Due to Renfrow's own testimony at trial, the result of the proceeding would have been the same regardless of the alleged errors. The claim is without merit.

To read the full opinion, click here:

<http://courts.ms.gov/Images/Opinions/CO112791.pdf>

Richard A. Simoneaux v. State, No. 2015-CP-00111-COA (Miss.Ct.App. May 10, 2016)

CASE: PCR – Sexual Abuse of a Vulnerable Adult, Sexual Battery, Burglary x2, and Voyeurism x2

SENTENCE: 25 years on each count to run concurrently

COURT: Pike County Circuit Court

TRIAL JUDGE: Hon. David H. Strong, Jr.

APPELLANT ATTORNEY: Richard A. Simoneaux (Pro Se)

APPELLEE ATTORNEY: Jeffrey A. Klingfuss

DISPOSITION: Dismissal of PCR Affirmed. Irving, P.J., for the Court. Lee, C.J., Griffis, P.J., Barnes, Ishee, Carlton, Fair, James, Wilson and Greenlee, JJ., Concur.

ISSUE: Whether the trial court violated petitioner's due process rights by dismissing his motion for subpoena duces tecum as a PCR.

FACTS: Richard Simoneaux pled guilty to the sexual abuse of a 76 year old vulnerable adult who lived in a nursing home. He also entered guilty pleas to sexual battery, burglary, and voyeurism, which stemmed from him peeping into nursing homes and spying upon the residents. The judge followed the State's recommendation, and sentenced him to 25 years on each count to serve concurrently. With new counsel, Simoneaux filed a PCR, alleging several claims, including: an insufficient factual basis for his pleas, ineffective assistance of counsel, and a violation of double jeopardy. The trial judge denied relief and the COA affirmed. *Simoneaux v. State*, 29 So. 3d 26 (Miss. Ct. App. 2009). On May 27, 2014, Simoneaux filed a motion for a subpoena duces tecum, which the trial court treated as a PCR and dismissed. On October 6, 2014, Simoneaux filed a motion for a complete exoneration of his previous convictions, which the trial court treated as a motion for reconsideration and denied. Simoneaux appealed, alleging that his due-process rights were violated by the suppression of evidence by the State and, ultimately, by the trial court through its dismissal of his motion for a subpoena duces tecum.

HELD: Simoneaux's motion was time-barred, successive-writ barred, and without merit. A valid guilty plea precludes a petitioner from asserting a *Brady* violation, which is basically the gist of Simoneaux's argument. When Simoneaux entered a valid guilty plea to the charges against him, he waived his right to challenge the sufficiency of the evidence to support his convictions.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO113096.pdf>

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